

## HOUSE BILL NO. 390

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(3) "Government attorney" means:

(A) the chief attorney for a governmental entity; AND

(B) THE ATTORNEY GENERAL WITH RESPECT TO THE STATE, EXCEPT A UNIT OF THE UNIVERSITY SYSTEM.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership,

1 limited liability company, business, or trust.

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3 **NEW SECTION. Section 3. Causes of action.** (1) A person causing damages in excess of \$500 to  
4 a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

5 (a) knowingly presents or causes to be presented to an officer or employee of the governmental entity  
6 a false claim for payment or approval;

7 (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false  
8 claim paid or approved by the governmental entity;

9 (c) conspires to defraud the governmental entity by getting a false claim allowed or paid by the  
10 governmental entity;

11 (d) has possession, custody, or control of public property or money used or to be used by the  
12 governmental entity and knowingly delivers or causes to be delivered less property or money than the amount  
13 for which the person receives a certificate or receipt;

14 (e) is authorized to make or deliver a document certifying receipt of property used or to be used by the  
15 governmental entity and knowingly makes or delivers a receipt that falsely represents the property used or to  
16 be used;

17 (f) knowingly buys, or receives as a pledge of an obligation or debt, public property of the governmental  
18 entity from any person who lawfully may not sell or pledge the property;

19 (g) knowingly makes or uses or causes to be made or used a false record or statement to conceal,  
20 avoid, or decrease an obligation to pay or transmit money or property to the governmental entity; or

21 (h) is a beneficiary of an inadvertent submission of a false claim to the governmental entity,  
22 subsequently discovers the falsity of the claim, and fails to disclose the false claim to the governmental entity  
23 within a reasonable time after discovery of the false claim.

24 (2) A court shall assess not less than two times and not more than three times the amount of damages  
25 that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may  
26 impose a civil penalty of up to \$10,000 for each act. The court may not assess a civil penalty if the court finds  
27 all of the following:

28 (a) The person committing the act furnished the government attorney with all information known to that  
29 person about the act within 30 days after the date on which the person first obtained the information.

30 (b) The person fully cooperated with any investigation of the act by the government attorney.

1 (c) At the time that the person furnished the government attorney with information about the act, a  
2 criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and  
3 the person did not have actual knowledge of the existence of an investigation into the act.

4 (3) Liability under this section is joint and several for any act committed by two or more persons.

5 (4) This section does not apply to claims, records, or statements made in relation to claims filed with  
6 the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, PAYMENTS, or  
7 statements made under the tax laws contained in Title 15 or 16, OR MADE TO THE DEPARTMENT OF NATURAL  
8 RESOURCES AND CONSERVATION UNDER TITLE 77.

9 (5) A private citizen OR GOVERNMENTAL ENTITY may not file a complaint:

10 ~~—— (a) against a member of a governmental entity's legislative body or judiciary or against an elected official~~  
11 ~~of a governmental entity if the complaint is based on evidence or information known to the governmental entity~~  
12 ~~when the complaint was filed;~~

13 (A) AGAINST A GOVERNMENTAL ENTITY OR AN OFFICER OR EMPLOYEE OF A GOVERNMENTAL ENTITY ARISING  
14 FROM CONDUCT BY THE OFFICER OR EMPLOYEE RELATED TO THE OFFICER'S OR EMPLOYEE'S SERVICE TO THE  
15 GOVERNMENTAL ENTITY;

16 (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative  
17 civil penalty proceeding in which AN AGENCY OF the governmental entity is already a party;

18 (c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or  
19 administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the  
20 senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a  
21 political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the  
22 information on which the allegations are based and voluntarily provided the information to the governmental  
23 entity AGENCY THAT IS INVOLVED WITH THE CLAIM THAT IS THE BASIS FOR THE COMPLAINT before filing the complaint  
24 and the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the  
25 public disclosure; or

26 (d) that is based upon information discovered by a present or former employee of the governmental  
27 entity during the course of employment unless the employee first, in good faith, exhausted existing internal  
28 procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the  
29 governmental entity failed to act on the information provided within a reasonable period of time.

30

1        NEW SECTION. Section 4. Limitation of actions. An action may not be filed under [section 3] more  
2        than 3 years after the date on which an official of the governmental entity charged with responsibility to act in  
3        the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever  
4        occurs first.

5  
6        NEW SECTION. Section 5. Investigation and complaint by government attorney. A government  
7        attorney may investigate an alleged violation of and file a complaint under [section 3].

8  
9        NEW SECTION. Section 6. Complaint by private citizen. (1) A private citizen may file a complaint  
10       under ~~[section 3]~~ WITH THE GOVERNMENT ATTORNEY A NOTICE alleging a violation OF [SECTION 3] against a  
11       governmental entity of which the private citizen is a resident. The private citizen shall ~~serve on~~ FILE WITH the  
12       government attorney a ~~copy of the complaint, any accompanying document, including a brief, and~~ INCLUDING A  
13       written disclosure of material evidence and information alleging violations ~~within 3 days of the filing of the~~  
14       ~~complaint.~~

15       (2) Within 60 days after receiving a ~~complaint~~ NOTICE AND BRIEF, the government attorney may elect to  
16       ~~intervene as a plaintiff~~ FILE A COMPLAINT UNDER [SECTIONS 3 AND 5] and may, for good cause shown, move the  
17       court for extensions of the time for ~~making the election~~ FILING A COMPLAINT. ~~Before the expiration of the 60-day~~  
18       ~~period or of any extension, the government attorney shall:~~

19       ~~—— (a) notify the court that the government attorney intends to proceed with the action, in which event the~~  
20       ~~action must be conducted by the government attorney and the court shall dismiss the private citizen from the~~  
21       ~~action; or~~

22       ~~—— (b) notify the court that the government attorney declines to proceed with the action, in which event the~~  
23       ~~private citizen may conduct the action.~~

24       ~~—— (3) (a) If the government attorney does not intervene under subsection (2) or intervenes and does not~~  
25       ~~elect to conduct the action and have the private citizen dismissed, at the request and expense of the government~~  
26       ~~attorney, the private citizen shall serve the government attorney with copies of all pleadings, motions, and other~~  
27       ~~documents filed in the action and provide the government attorney with copies of all deposition transcripts.~~

28       (3) IF THE GOVERNMENT ATTORNEY FILES A COMPLAINT, THE PRIVATE CITIZEN MAY ENTER THE ACTION AS A  
29       COPLAINTIFF, BUT THE GOVERNMENT ATTORNEY HAS CONTROL OF THE PLAINTIFFS' STRATEGY, TACTICS, AND OTHER  
30       DECISIONMAKING. IF THE GOVERNMENT ATTORNEY DOES NOT FILE A COMPLAINT WITHIN THE TIME ALLOWED UNDER

1 SUBSECTION (2), THE PRIVATE CITIZEN MAY FILE A COMPLAINT.

2 ~~(b)(4)~~ The court shall permit the government attorney to intervene in an action in which the government  
3 ~~attorney did not intervene~~ THAT THE GOVERNMENT ATTORNEY DECLINED TO FILE under subsection (2) ~~or intervened~~  
4 ~~and did not elect to conduct the case and have the private citizen dismissed~~ if the court determines that the  
5 interests of the governmental entity are not being adequately represented by the private citizen. If intervention  
6 is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil  
7 penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had  
8 not intervened ~~or had intervened and did not elect to conduct the action and have the private citizen dismissed.~~

9 ~~(4)(5)~~ After a private citizen files a complaint, no other private citizen may file a complaint based on the  
10 facts underlying the pending action.

11  
12 NEW SECTION. Section 7. Dismissal of private citizen's complaint. On the motion of a government  
13 attorney, the court may dismiss a private citizen's complaint for good cause. If an intervening government  
14 attorney seeks dismissal of a private citizen's complaint, the private citizen must be notified by the government  
15 attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present  
16 evidence at a hearing.

17  
18 NEW SECTION. Section 8. Settlement. An action may be settled if the court determines after a  
19 hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private  
20 citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may  
21 present evidence at the settlement hearing.

22  
23 NEW SECTION. Section 9. Burden of proof -- effect of criminal conviction. (1) The plaintiff in an  
24 action under [section 3] shall prove each essential element of the cause of action, including damages, by a  
25 preponderance of the evidence.

26 (2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny  
27 the essential elements of the offense in an action under [section 3] that involves the same event or events as  
28 the criminal proceeding.

29  
30 NEW SECTION. Section 10. Distribution of damages and civil penalty. If an action is settled or the

1 governmental entity prevails in ~~the~~ AN action:

2 (1) filed by a ~~private citizen~~ GOVERNMENTAL ENTITY UNDER [SECTION 6(2)] AND THE PRIVATE CITIZEN ELECTED  
3 NOT TO ENTER THE ACTION AS A COPLAINTIFF, except as provided in subsection (3), the private citizen is entitled  
4 to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the  
5 governmental entity in the settlement or judgment ~~if the government attorney intervened and the private citizen~~  
6 ~~was dismissed from the action;~~

7 (2) filed by a private citizen, except as provided in subsection (3), the private citizen is entitled to  
8 between 25% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental  
9 entity in the settlement or judgment ~~if the government attorney did not intervene or intervened under [section~~  
10 ~~6(3)(b)];~~

11 (3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be  
12 in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the  
13 court;

14 (4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen  
15 and the damages and civil penalty must be deposited in the general fund of the governmental entity, EXCEPT THAT  
16 IF A TRUST FUND OF THE GOVERNMENTAL ENTITY SUFFERED A LOSS AS A RESULT OF THE DEFENDANT'S ACTIONS, THE  
17 TRUST FUND MUST FIRST BE FULLY REIMBURSED FOR THE LOSS AND THE REMAINDER OF THE DAMAGES AND ANY CIVIL  
18 PENALTY MUST BE DEPOSITED IN THE GENERAL FUND OF THE GOVERNMENTAL ENTITY.

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20 NEW SECTION. Section 11. Costs and attorney fees. A governmental entity in an action in which  
21 its government attorney filed a complaint or intervened is entitled to its reasonable costs and attorney fees if the  
22 action is settled favorably for the governmental entity or the governmental entity prevails. IN AN ACTION IN WHICH  
23 OUTSIDE COUNSEL REPRESENTS A GOVERNMENTAL ENTITY, THE COSTS AND ATTORNEY FEES AWARDED A GOVERNMENTAL  
24 ENTITY MUST EQUAL THE OUTSIDE COUNSEL'S CHARGES REASONABLY INCURRED BY THE GOVERNMENTAL ENTITY FOR  
25 COSTS AND ATTORNEY FEES IN PROSECUTING THE ACTION. IN ANY OTHER ACTIONS IN WHICH COSTS AND ATTORNEY FEES  
26 ARE AWARDED A GOVERNMENTAL ENTITY, THEY MUST BE CALCULATED BY REFERENCE TO THE HOURLY RATE CHARGED  
27 BY THE DEPARTMENT OF JUSTICE AGENCY LEGAL SERVICES BUREAU FOR THE PROVISION OF LEGAL SERVICES TO STATE  
28 AGENCIES, MULTIPLIED BY THE NUMBER OF ATTORNEY HOURS DEVOTED TO THE PROSECUTION OF THE ACTION, PLUS THE  
29 ACTUAL COST OF ANY EXPENSES REASONABLY INCURRED IN THE PROSECUTION OF THE ACTION. A private citizen who  
30 ~~files a complaint~~ IS A PLAINTIFF OR COPLAINTIFF is entitled to reasonable costs and attorney fees if the action is

settled favorably for the governmental entity or the governmental entity prevails in the action, ~~whether or not the governmental entity's government attorney intervened.~~ A person who is the subject of a complaint and who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen ~~filed the complaint and the governmental entity intervened~~ AND A GOVERNMENTAL ENTITY WERE COPLAINTIFFS.

NEW SECTION. Section 12. Prohibitions on employers -- employee remedies. (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 3].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for ~~all relief necessary to make the employee whole, including;~~

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) ~~two times the amount of~~ back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; AND

~~— (iv) appropriate punitive damages; and~~

~~(v)~~ (iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

NEW SECTION. Section 13. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

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